

# **ZONING BOARD OF REVIEW**

**Barrington, Rhode Island**

**April 21, 2011**

**APPLICATIONS: #3617, 3618, 3619, 3620 and 3621**

## **MINUTES OF THE MEETING:**

**At the call of the Chairman, Thomas Kraig, the Board met with Paul Blasbalg, Peter Dennehy, David Rizzolo and Stephen Venuti.**

**Also present was solicitor Andrew Teitz and Building Official Robert Speaker.**

**At 7:02 P.M. Mr. Kraig opened the meeting and the Board proceeded to hear the following matters. At 8:53 P.M. the public participation portion of the meeting was closed and the Board proceeded to deliberate and vote on those applications it had heard that had not been continued.**

**Continuation of application #3617, Robert MacLea III, 35 Knapton Avenue, Barrington, RI 02806, applicant and owner, for permission to add a second floor over the existing building, add a two-story addition, add a deck and a covered porch; Assessor's Plat 23, Lot 231, Neighborhood Business Zone, 254 Waseca Avenue, Barrington, RI 02806, requiring dimensional relief for front yard setback and side**

**yard setback.**

**Present: Scott Weymouth, architect, 14 Imperial Place, Providence, RI, for the applicant**

**In the audience:**

**Richard Kirby, attorney, 243 N. Main Street, Providence, RI**

**Dr. Peter Oppenheimer, 260 Waseca Avenue, Barrington, RI**

**The following items were submitted as exhibits:**

**„« Surveyed site plan**

**„« Photographs of existing conditions**

**Mr. Weymouth discussed the surveyed site plan as well as the floor plan that had been submitted at the Board's request. In reviewing the surveyed plan, it was determined that the proposed structure would be closer to the front yard setback than originally thought; therefore, front yard setback relief would no longer be needed. He reiterated that the homeowner was seeking to utilize the existing structure to create adequate living space for his family.**

**Mr. Weymouth explained that in order to put the necessary, additional bedrooms on the second floor, the roof would need to be raised in order to comply with current Building Code regulations. He noted that at the highest point the new roof ridge would be seven feet higher than the existing structure. The proposed roof overhang**

would be 16 inches; however, they would be willing to reduce the overhang to 12 inches in order not to require further relief. Mr. Weymouth also noted that photographs had been submitted that show the morning sun on the elevated windows at Mr. Oppenheimer's property, noting that the proposed structure would not have any further effect on those windows.

Mr. Kirby stated that the new survey reflected that the setback on the west side of the structure would be 4'7", rather than the 4'9" side yard setback referred to by Mr. Weymouth or the 6' +/- referenced on the original proposal. He also stated that the windows that would be most affected by the proposed addition to the existing structure would be the box windows in the front, east portion of Dr. Oppenheimer's property, and submitted photos of those windows from the outside as well as views looking out from those windows, taken at two different angles. He reiterated that those windows, not the elevated windows, would be most impacted by the proposed second floor addition. Mr. Kirby also stated that the applicant had not demonstrated a hardship, nor is the proposed relief the least relief necessary, as there were other options available to the homeowner. Mr. Kirby also reminded the Board that the proposed addition would negatively impact the value of Mr. Oppenheimer's property.

In discussion with the Board, Mr. Kirby stated that the portion of the proposal to which Dr. Oppenheimer objected, and the "massing" to which they referred, was the addition over the existing building, not

the addition to the east of it, and that a larger addition, farther east, would be possible without so adversely impacting the Oppenheimer property.

Mr. Rizzolo asked Mr. Weymouth if he would be able to achieve what he was seeking if he were to remove the gables. Mr. Weymouth said it would be possible. The Board then discussed the possibility of relocating the structure so that it would not require zoning relief. It was noted that the portion to be added to the existing building, or even the whole structure, could be relocated so as to require less relief.

**MOTION:** Mr. Venuti moved to deny the application. Mr. Dennehy seconded the motion and it carried 4-1, with Mr. Kraig dissenting.

#### **DISCUSSION:**

The Board members stated they were denying the application for the following reasons:

„« The proposed relief is not the least relief necessary

„« There was uncontroverted expert testimony from a real estate professional that there would be substantial harm to the value of the neighbor's property.

#### **REASON FOR DECISION:**

It was the judgment of the Board that the following standards in Section 185-69 have NOT been met: C) that the granting of the

requested variance will not alter the general character of the surrounding area or impair the intent or purpose of this chapter or the comprehensive Plan; D) that the relief to be granted is the least relief necessary.

Mr. Kraig indicated in his comments and discussion on the application that in his opinion, the proposal is the least relief necessary in order to effect the addition to space that the applicant is seeking; he also indicated that he did not feel that the testimony of the real estate professional deserved the weight being accorded it in that it had been internally inconsistent: it had referred to the overall "massing" of the proposed structure, but the abutter's attorney conceded that it was only the addition over the existing structure that was an objectionable massing; it had referenced the view and light from the office windows, but again the abutter's attorney had conceded that view and light were not legally relevant, and that it was different windows that were adversely affected.

Application #3618, Kevin and Joanna Dunn, 40 Bluff Road, Barrington, RI 02806, applicants and owners, for permission to replace existing porch over entry; Assessor's Plat 8, Lot 4, R-25 District, 40 Bluff Road, Barrington, RI 02806, requiring dimensional variance for front yard setback.

Before this matter began, Mr. Rizzolo recused himself.

**Present: Kevin Dunn, 40 Bluff Road, Barrington, RI  
Scott Weymouth, architect, 14 Imperial Place, Providence, RI**

**Due to Mr. Rizzolo's recusal, there was not a quorum available to hear the matter; therefore, the Board was compelled to continue the matter.**

**MOTION: Mr. Blasbalg moved to continue the application to the May 19, 2011 meeting. Upon a second from Mr. Venuti, the Board voted unanimously (4-0) to continue.**

**Application #3619, Gordon and Diane Hutton, 88 Boyce Avenue, Barrington, RI 02806, applicants and owners, for permission to change front and side elevation design approved by the ZBR on Application #3572; Assessor's Plat 34, Lot 47, R-10 District, 101 Boyce Avenue, Barrington, RI 02806, requiring variance for being within the 100' setback from the wetlands/waterbody.**

**Present: Gordon Hutton, 88 Boyce Avenue, Barrington, RI**

**In the audience: John Tomulonis, 90 Boyce Avenue, Barrington, RI**

**Mr. Hutton opened by explaining that since he had last received approval, his survey had determined that the Town plat map was incorrect; therefore, they had to reduce the width of the house in order to remain within the appropriate side yard setbacks. As part of**

that reconfiguration, they are looking to add a gabled peak as well as dormers on the front of the house, in keeping with the character of the neighborhood. This change will also allow them to create adequate space in the attic for the mechanical components related to the solar panels they are looking to install. Mr. Hutton asserted that the lot coverage would remain the same, while the total living space will be reduced by approximated 200 square feet.

Mr. Kraig read into the record a letter from the Conservation Commission recommended approval of the proposed plans.

Mr. Tomulonis requested the matter be continued in order to allow him adequate time to review the application. He stated that while he had purchased his property in December 2010, he had not been notified of the application until very shortly before the meeting. The Board's records indicated that the notice had gone to the address of the prior owner. While the Board noted that by appearing, Mr. Tomulonis had legally waived the failure of notice, equity argued for an extension.

**MOTION:** Upon a motion by Mr. Venuti, with a second by Mr. Blasbalg, the Board unanimously (5-0) voted to continue this matter to the May 19, 2011 meeting.

Application #3620, Judith P. Diaz, 595 Maple Avenue, Barrington, RI 02806, applicant, Mario Micheletti, 5 Hoyer Court, East Greenwich, RI

02818, owner, for permission to open a salon; Assessor's Plat 27, Lot 108, Waterfront Business District, 32 Barton Avenue, Barrington, RI 02806, requiring a Special Use Permit.

**Present:** Judith P. Diaz, 595 Maple Avenue, Barrington, RI

There was no one in the audience to speak for or against this application.

Ms. Diaz explained that she was seeking to open a salon at 32 Barton Avenue, to the side and rear of Tyler Point Grille. She will be offering hair and skin care for men and women. While the parking lot is shared with the restaurant, her business will be open opposite hours; therefore, the parking is ample for her needs. Deliveries will be limited to small parcel deliveries from UPS, and trash disposal will be minimal, as she will be bringing bottles off-site for recycling. The remaining trash will be disposed of in the existing dumpster. It was noted that the only reason she is before the board is for a Special Use Permit; no additional relief is needed and no significant modification will be made to the building. Ms. Diaz has already received approval for her sign from the Technical Review Committee and no additional relief is needed for the signage.

**MOTION:** Mr. Blasbalg moved to approve the application. Mr. Rizzolo seconded the motion and it carried unanimously (5-0).

## **DISCUSSION:**

**The Board members stated they were in favor of approving the application for the following reasons:**

**„« The proposed use is appropriate for the site**

**„« There will be no conflicts with the existing business**

**„« No additional relief is required**

## **REASON FOR DECISION:**

**It was the judgment of the Board that the standards in Section §185-73 have been met: That A). The public convenience and welfare will be substantially served, B). It will be in harmony with the general purpose of this chapter, and with the Comprehensive Community Plan, C). It will not result in or create conditions that will be inimical to the public health, safety, morals and general welfare of the community and D). It will not substantially or permanently injure the appropriate use of the property in the surrounding area or district.**

**Application #3621, Robert and Kara Humm, 26 Walter Street, Barrington, RI 02806, applicants and owners, for permission to erect a 10-foot fence; Assessor Plat 22, Lot 97, R-10 District, 26 Walter Street, Barrington, RI 02806, requiring dimensional variance for fence height.**

**Present: Robert and Kara Humm, 26 Walter Street, Barrington, RI**

**There was no one in the audience to speak for or against this application.**

**The following items were submitted as an exhibit:**

**„« Pictures of the existing stone wall and property conditions**

**The applicants explained that they are seeking to create a six-foot fence „on top“ of an existing four-foot stone wall at the rear of their property: the fence would be mounted on their side of the stone wall, and the fencing pieces would begin at the height of the wall. They noted that the rear neighbor's property is significantly elevated above their property V the four-foot wall is a retaining wall; therefore, they need the additional fence height in order to create privacy in their back yard. It was noted that the fence would appear to be a six-foot fence from the neighbor's point of view, and that six-foot height would be allowable without relief.**

**Mr. Kraig read a letter into the record from Lavinia Pagnano opposing the application.**

**MOTION: Upon a motion by Mr. Venuti, with a second by Mr. Dennehy, the Board voted unanimously (5-0) to grant this application.**

#### **DISCUSSION:**

**The Board members stated they were in favor of approving the application for the following reasons:**

**„« The proposal will not change the character of the surrounding area**

**„« The fence will present as a six-foot fence to the rear neighbor**

**„« The letter opposing the application offered no reason for the opposition**

### **REASON FOR DECISION:**

**It was the judgment of the Board that the standards in Section §185-69 have been met: A) that the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area, and is not due to an economic disability of the applicant; B) that the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain; C) that the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of this chapter or the comprehensive Plan; D) that the relief to be granted is the least relief necessary. Additionally, the standards for a dimensional variance set forth in Section §185-71 have been met because the applicant has proved that the hardship to be suffered by the owner, absent granting the relief, would amount to more than a mere inconvenience.**

### **MINUTES OF THE PREVIOUS MEETING:**

**A motion was made by Mr. Rizzolo and seconded by Mr. Blasbalg to accept the March 17, 2011 Zoning Board of Review minutes as written. The motion carried unanimously (5-0).**

**ADJOURN:**

**There being no other business, Mr. Venuti moved to adjourn at 9:32 P.M. Mr. Dennehy seconded the motion and the meeting was adjourned.**

**Respectfully submitted,**

**Valerie Carroll, Secretary**

**Thomas Kraig, Chairman**

**cc: Andrew Teitz, Solicitor**